

STATE OF MONTANA
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNFAIR LABOR PRACTICE CHARGE NO. 19-84

SIDNEY EDUCATION ASSOCIATION,
MEA,

Complainant,

vs.

RICHLAND COUNTY HIGH SCHOOL
DISTRICT #1 AND ELEMENTARY
DISTRICT #5, SIDNEY, MONTANA,

Defendant.

FINDINGS OF FACT,
CONCLUSION OF LAW
AND
RECOMMENDED ORDER

* * * * *

INTRODUCTION

On October 18, 1984 the Sidney Education Association filed an unfair labor practice charge with this Board alleging that the Defendant School District had violated Section 39-31-401(1) and (5) MCA by refusing to deduct dues from teachers' pay, pursuant to authorization cards executed by members of the bargaining unit, as the District had done in previous years. The School District filed its answer on February 26, 1985 denying any violation and asserting that the Association should be denied recovery because it waived its right to bargain over the subject of authorization cards.

A hearing was held in Sidney on April 23, 1985 under authority of Section 39-31-406 MCA. The Association was represented by Emilie Loring; the School District was represented by Leslie S. Waite, III.

ISSUES

The charge as filed alleges violations of Section 39-31-401(1) and (5) MCA. With respect to the Section 39-31-401(5) MCA charge the question raised is whether there

1 was a duty to bargain on the subject of the dues authoriza-
2 tion form or, stated another way, is the subject of a dues
3 authorization form a mandatory subject of bargaining? If it
4 is a mandatory subject and must, therefore, be bargained
5 before a change can be made, the question of whether an
6 offer to bargain was made arises. If the offer to bargain
7 was made, then the question of whether there was a waiver of
8 the right to bargain must be answered.

9 Regarding the Section 39-31-401(1) MCA charge, the
10 question raised is whether there was an independent viola-
11 tion of the teachers' Section 39-31-201 MCA rights as
12 protected by Section 39-31-401(1) MCA. There can be no
13 derivative violation of Section 39-31-401(1) MCA unless a
14 violation of Section 39-31-401(5) MCA is found.

15 16 RULINGS ON MOTIONS

17 At the close of the Association's case the School
18 District moved for dismissal of the charge for failure of
19 proof on the basis that the Association had failed to prove
20 its case. At the time I took the motion under advisement.
21 The District argues that since the Association failed to
22 introduce the authorization cards which the Association
23 claims were submitted to the District, the Association
24 failed to prove it had a valid, signed authorization form
25 from each teacher. The District further argues that the
26 Association failed to prove that its secretary certified the
27 monthly amount of dues to the District pursuant to Section
28 39-31-203 MCA.

29 At the hearing the Association introduced blank forms
30 instead of signed authorization cards; however, the District
31 admitted in its answer that the District had in the past
32

1 deducted dues authorized by Association forms. The School
2 District's motion to dismiss is denied.

3 The School District in its brief asked that the Section
4 39-31-401(1) MCA charge be dismissed because the Association
5 did not allege facts in support of a Section 39-31-401(1)
6 MCA violation. The charge alleged violations of both
7 Section 39-31-401(1) and (5) MCA and went on to specify
8 alleged facts which would constitute the alleged violations.
9 The District request to dismiss is denied.

10
11 FINDINGS OF FACT

12 Based on the substantial evidence on the record,
13 including the sworn testimony of witnesses, I find as
14 follows:

15 1. The Sidney Education Association (the Association)
16 is the exclusive representative of teachers employed by
17 Richland County High School District No. 1 and Elementary
18 District No. 5 (the School District or District).

19 2. The School District and the Association have been
20 parties to collective bargaining agreements for several
21 years. The parties were in negotiations for a successor
22 agreement, to their agreement which expired on July 1, 1984,
23 during the spring, summer and fall of 1984.

24 3. The agreements prior to July 1, 1984 contained a
25 representation fee provision which stated that "...No person
26 shall be required to join the Association, but membership in
27 the Association shall be made available to all persons
28 regardless of race, creed, color or sex, consistent with the
29 Association constitution and by-laws. Any member of the
30 appropriate unit who is not a member of the Association by
31 October 1, shall pay an amount equal to current Association
32 membership dues to the Association..."

1 4. The above representation fee language was deleted
2 from the new agreement entered into by the parties in
3 January of 1985.

4 5. Prior to July 1, 1984 the School District withheld
5 dues from bargaining unit members' pay checks pursuant to an
6 Association authorization form. The form, which is used
7 extensively throughout the state, contained the following
8 pertinent language:

9 I hereby authorize my employer to deduct the
10 approved annual dues, fees and related voluntary
11 contributions for MEA, NEA and my local association
12 continuously from year to year unless revoked
13 for subsequent years by written notice to the
14 employer, MEA and the local association during the
15 termination period established by the MEA, or in
16 the case of NEA-PAC, prior to August 31. The
17 local association shall notify the employer of
18 specific amounts to be deducted each year.

19 6. In 1981 teacher Frey failed to join the Association
20 or to pay the representation fee required by the
21 agreement in effect at that time. The Association notified
22 the District of the failure and asked that Frey's dues be
23 paid prior to March 31st and that his next individual
24 contract contain a provision requiring him to pay the
25 representation fee. Frey did not return the following year.

26 7. In October 1983 teacher Feller, who had earlier
27 signed an Association authorization form, wrote the District
28 a letter saying he only wanted an amount equal to the local
29 association dues deducted from his check. The effect of his
30 letter was an attempt to revoke a part of the earlier
31 authorization. The District complied with his request.

32 8. The Association filed a grievance pursuant to the
collective bargaining agreement and took the matter before
an arbitrator.

 9. The arbitrator held that the District violated the
agreement by not deducting all dues from Feller's pay

1 because the District had recognized the use of the Associa-
2 tion's form and had agreed in the collective bargaining
3 contract that teachers who did not become members of the
4 Association must pay the representation fee. The arbitrator
5 noted that the contract did not require that the District
6 fire Feller. Feller did not return to teach.

7 10. The School District believed, through its Trust-
8 ees, that a number of teachers had left the school because
9 of the representation fee provision.

10 11. On August 21, 1984 Superintendent Adkins gave a
11 letter to Sidney Education Association President Kallevig
12 which informed her that he was going to recommend a new
13 deduction from wages form for use by the District. Adkins
14 asked Kallevig to let him know if she had any questions
15 regarding the form.

16 12. Adkins attached the proposed deduction form to his
17 letter to Kallevig. The form had the effect of eliminating
18 automatic renewals and it required that teachers sign a new
19 form each year. It further provided that a teacher could
20 revoke dues deduction authorization at any time during the
21 year.

22 13. Kallevig and other Association members examined
23 Adkins' proposed form then forwarded it to their attorney.

24 14. The School District Trustees met that same even-
25 ing, August 21st, and approved Adkins' form. Kallevig and
26 other Association members attended the meeting; however,
27 they made no comment regarding the form.

28 15. On August 22, 1984 the Clerk of the School Dis-
29 trict issued a memorandum stating that the new form must be
30 completed and returned for voluntary deductions to be made.

31 16. On August 24, 1984 Adkins sent a letter to all
32 teachers which stated, in pertinent part, that the District

1 intended to remove the representation fee provision from
2 future contracts and that the new authorization form could
3 be altered upon written request.

4 17. On September 7, 1984 Kallevig wrote a letter to
5 Adkins informing him that the Association would continue to
6 use its form for authorization of dues deduction. It went
7 on to state that the Association had informed its bargaining
8 unit members that the use of the District's new form was not
9 required.

10 18. On October 2, 1984 Kallevig again wrote Adkins to
11 remind him that the Association did not intend to change its
12 method of dues deduction authorization and expected the
13 District to deduct dues as it had in the past.

14 19. On October 16, 1984 Adkins wrote another letter to
15 Kallevig. He told her, although the new form had already
16 been implemented, the District was willing to bargain over
17 the future use of either of the forms. He asked that she
18 notify him if she wished to bargain.

19 20. On October 20, 1984 Kallevig replied to Adkins'
20 October 16th letter by writing to him and stating the
21 Association saw no reason to bargain at that time on the
22 dues authorization form.

23 21. Since August 21, 1984 the District has refused to
24 deduct dues upon written authorization by teachers using the
25 Association's form. The Association took certain steps to
26 have teachers pay dues directly to the Association.

27 22. Counsel for both parties stipulated at the hearing
28 that if it is found that the District should have deducted
29 dues upon authorization using the Association form, a
30 remedial hearing would be proper for the purpose of deter-
31 mining the extent, if any, damages have been mitigated by
32

1 the Association receiving direct payment of dues from
2 individual members.

3 4 DISCUSSION

5 The charges filed allege that the School District
6 violated Sections 39-31-401(1) and (5) MCA. Section 39-31-
7 401(5) MCA makes it an unfair labor practice for a public
8 employer to "...refuse to bargain collectively in good faith
9 with an exclusive representative." Section 39-31-401(1) MCA
10 makes it an unfair labor practice for a public employer to
11 "...interfere with, restrain, or coerce employees in the
12 exercise of the rights guaranteed in Section 39-31-201."
13 Section 39-31-201 provides that "Public employees shall have
14 and shall be protected in the exercise of the right of
15 self-organization, to form, join, or assist any labor
16 organization, to bargain collectively through representa-
17 tives of their own choosing on questions of wages, hours,
18 fringe benefits, and other conditions of employment, and to
19 engage in other concerted activities for the purpose of
20 collective bargaining or other mutual aid or protection free
21 from interference, restraint, or coercion."

22 Where provisions in Montana's Collective Bargaining for
23 Public Employees Act are the same or are similar to the
24 National Labor Relations Act the Board of Personnel Appeals
25 has been guided by National Labor Relations Board and
26 federal court precedent. The Montana Supreme Court has
27 upheld that practice in State Department of Highways v.
28 Public Employees Craft Council, 165 Mont. 349; 529 P.2d 785,
29 87 LRRM 2101; AFSCME Local 2390 v. City of Livingston, 171
30 Mont. 20, 555 P.2d 507, 93 LRRM 2753 (1976). Sections 7,
31 8(a)(1) and 8(a)(5) of the National Labor Relations Act are
32 practically identical to Sections 39-31-201 and 401(1) and

1 (5) MCA. The two Acts are dissimilar in their provisions
2 for dues checkoff.

3 The Labor Management Relations Act, Section 302(a),
4 prohibits, in general, payments from an employer to a union.
5 However, it provides an exception to that general prohibi-
6 tion by stating, in 302(c):

7 The provisions of this section shall not be
8 applicable... (4) with respect to money deducted
9 from the wages of employees in payment of member-
10 ship dues in a labor organization: Provided, that
11 the employer has received from each employee, on
12 whose account such deductions are made, a written
assignment which shall not be irrevocable for a
period of more than one year, or beyond the
termination date of the applicable collective
agreement, whichever occurs sooner.

13 Section 39-31-203 MCA states:

14 Upon written authorization of any public employee
15 within a bargaining unit, the public employer
16 shall deduct from the pay of the public employee
17 the monthly amount of dues as certified by the
secretary of the exclusive representative and
shall deliver the dues to the treasurer of the
exclusive representative.

18 The Labor Management Relations Act permits an employer
19 to deduct union dues and to transfer such dues to the union.
20 The Montana Act mandates that such dues be deducted and
21 forwarded to the union upon written authorization by the
22 employee and upon certification by the union. The whole
23 theme of Section 302 is prohibition against employer aid to
24 a union until the circumstances under which it is permitted
25 are identified in Section 302(c). The federal act states
26 what the employer may do; the Montana Act expresses what the
27 employer must do.

28 Because Section 39-31-203 MCA is mandatory and there-
29 fore obligates the public employer to deduct union dues from
30 an employee's pay, there is no need to go through an analy-
31 sis, under the Section 39-31-401(5) MCA charge, to determine
32 whether there was a duty to bargain, an offer to bargain or

1 a waiver of the right to bargain over the form to be used
2 for dues deductions for bargaining unit members. The
3 individual members have the right to have their dues deduct-
4 ed as long as they submit written authorization to the
5 School District. Not only did the duty to bargain not arise
6 on the part of the District, indeed there was no right to
7 bargain. The subject was permissive. If the Association
8 had elected to do so it could have taken advantage of the
9 District's offer to bargain; however, it was under no duty
10 to do so.

11 Unlike wages, hours and other conditions of employment
12 upon which both parties are required to bargain in good
13 faith, but about which neither is required to make a conces-
14 sion, dues deduction is mandated by statute and cannot be
15 altered by the parties unless both agree. To allow an
16 employer to insist on his own form for dues deduction to the
17 same extent that he may insist on his own views with respect
18 to mandatory subjects of bargaining would in effect allow
19 the employer to deny an employee, who otherwise complied
20 with Section 39-31-203 MCA, his statutory right. If the
21 subject of the dues authorization form were a mandatory
22 subject of bargaining, the employer would not have to agree
23 to the use of any form, pursuant to Section 39-31-305 MCA,
24 thereby denying the employee his right to have dues deducted
25 from his pay.

26 Since there was no duty to bargain because the subject
27 was permissive there could be no violation of Section
28 39-31-401(5) MCA unless the School District insisted to
29 impasse upon bargaining on the subject. NLRB v. Wooster
30 Division of Borg-Warner Corp., 156 U.S. 342, 42 LRM 2034
31 (1958). There is no evidence showing impasse existed at the
32 time these charges were filed.

1 Dues checkoff is a mandatory subject of bargaining in
2 the private sector because the courts have held that since
3 union security is a mandatory subject of bargaining and
4 checkoff is merely a means of implementing union security,
5 it too is mandatory. Marine & Shipbuilding Workers v. NLRB
6 (Bethlehem Steel Co.), 320 F.2d 619, 53 LRRM 2878 (1963).
7 That would be so under the Montana Act were it not for the
8 mandate of Section 39-31-203 MCA. Without that specific
9 language in the Act what would be left regarding checkoff is
10 Section 39-31-410(3) MCA:

11 [Section 39-31-401. It is an unfair labor prac-
12 tice for a public employer to:] ...discriminate in
13 regard to hire or tenure of employment in order to
14 encourage or discourage membership in any labor
15 organization; however, nothing in this chapter or
16 in any other statute of this state precludes a
17 public employer from making an agreement with an
18 exclusive representative to require, as a condi-
19 tion of employment, that an employee who is not or
20 does not become a union member must have an amount
21 equal to the union initiation fee and monthly dues
22 deducted from his wages in the same manner as
23 checkoff of union dues...

24 The above language is similar to Section 302(c) of the
25 Labor Management Relations Act in that it permits the
26 employer to bargain over checkoff as a part of an agency
27 shop provision, which is also permitted. However, the
28 purpose of the bargaining permitted by Section 39-31-401(3)
29 MCA on dues deduction is for bargaining unit members who are
30 not union members, therefore, checkoff is part and partial
31 or a means of implementing agency shop. Such is not the
32 case under Section 39-31-203 MCA, it deals with all bargain-
ing unit members including union members for whom no con-
tract provision requiring checkoff would be necessary
because they would voluntarily pay their dues thereby
relieving the union of the cost of dues collection. Section
39-31-401(3) MCA was not intended to deny Section 39-31-203
MCA rights to those employees who voluntarily come forward

1 and ask the employer to deduct union dues from their pay.
2 The similarity of the two Acts ends, with respect to check-
3 off, at their role in implementing union security. Section
4 39-31-203 MCA goes one step further and requires the employ-
5 er to checkoff dues regardless of the presence or absence of
6 a union security clause in the parties' collective bargaining
7 agreement, if the employee gives written authorization.

8 The problem perceived by the School District was that
9 it was losing teachers because some teachers did not want to
10 pay union dues. However, that problem, if in fact it was a
11 problem, was caused by the agency shop provision in the
12 parties' contract. It was not caused by the use of the dues
13 deduction authorization form. The two processes are alto-
14 gether different. On the one hand, the District agreed
15 contractually to require that any teacher in the bargaining
16 unit who was not a member of the union pay equivalent union
17 dues to the union. That provision in the agreement was
18 enforceable regardless of the presence or absence of a
19 signed dues authorization form. On the other hand, and
20 completely aside from the contract, the District recognized
21 and accepted an Association dues authorization form for
22 purpose of withholding amounts of money from the pay of
23 teachers who submitted the form. No teacher had to sign the
24 authorization form and there was no method available to the
25 Association to insure that any given teacher would sign it.
26 That, however, is not to say all teachers, under the agency
27 shop provision of previous agreements, did not have to pay
28 dues or the equivalent. They were so required as the
29 arbitrator ruled when the issue was placed before him.

30 The parties agreed during their last negotiations for a
31 successor contract to delete the agency shop provision. The
32 deletion, of course, means there is not union security; no

1 teacher can be forced to pay dues to the Association. It
2 does not mean the School District is relieved of its check-
3 off obligations under Section 39-31-203 MCA.

4 The Labor Management Relations Act provides that a dues
5 deduction authorization shall not be irrevocable for more
6 than a year. The Montana Act does not mention a period for
7 revocation of authorizations. The Association form, used
8 for several years by the parties and used extensively
9 throughout the state, provides authorization continuously
10 from year to year unless revoked during the termination
11 period established by the Montana Education Association.

12 Courts have generally held that as long as there is an
13 annual escape period, authorization with automatic renewal
14 provisions are valid. Machinists Monroe Lodge 778 v. Litton
15 Business Systems, Inc., 334 F.Supp. 310, 80 LRRM 2374 (ND
16 Va. 1971) aff'd, 80 LRRM 2379 (CA4, 1971), cert. denied, 409
17 U.S. 879, 81 LRRM 2391 (1972).

18 The Association's dues deductions authorizations form
19 clearly meets all the requirements of Section 39-31-203 MCA
20 and it, in all likelihood, meets the requirements set forth
21 in the Labor Management Relations Act.

22 The School District cites two decisions issued by the
23 Board of Personnel Appeals, Kalispell Federation of Teachers
24 v. Kalispell Education Association et al., ULP No. 2-79 and
25 Montana Federation of Teachers, APT, AFL-CIO v. Lake County
26 School District No. 30 et al., ULP 44-79, and urges that
27 they are on point and are controlling here. The facts of
28 Kalispell, supra were different. There a contract between
29 the Kalispell Education Association and the school district
30 provided that dues would be made on school district authori-
31 zation forms. The parties had agreed upon the form to be
32 used. The parties in the instant case have not so agreed.

1 The holding in Kalispell, supra, was that a dues authoriza-
2 tion form be freely entered into and that any conditions
3 placed on it be reasonable. The recommended ruling here is
4 not inconsistent with that rule. In Lake County, supra, the
5 district withheld dues without authorization and the Board
6 found that practice to be improper. The Board went on to
7 say any form need only indicate the employee's understanding
8 of the deduction and that it be signed. Again, that is not
9 inconsistent with what is being recommended here.

10 The School District asserts, and correctly so, that
11 both cases stand for the proposition that the necessary
12 elements for a form are that it indicate the employees
13 understanding of it as a dues deduction authorization, that
14 it authorizes the specific deduction and that it not in-
15 fringe upon the employees' rights. The Association form in
16 question here meets all three of those requirements.

17 The remaining question raised by the filing of the
18 charges is whether the School District violated Section
19 39-31-401(1) MCA by refusing to continue to use the Associa-
20 tion's authorization form for dues deductions for bargaining
21 unit teachers.

22 The School District contends that there were no factual
23 allegations concerning a Section 39-31-401(1) MCA violation
24 and that the issue tried at the hearing as stated in the
25 notice of hearing was whether the District violated Section
26 39-31-401(1) and (5) MCA by making a unilateral change in
27 working conditions which constituted a refusal to bargain in
28 good faith.

29 The Board's rules at 24.26.680 ARM state that the
30 complaint alleging an unfair labor practice shall contain"
31 ...a clear and concise statement of facts surrounding the
32 alleged violation, including the time and place of occur-

1 rence of the particular acts and a statement of the portion
2 or portions of the law or rules alleged to have been vio-
3 lated."

4 The charge filed by the Association alleged a violation
5 of Section 39-3-1-401(1) and (5) MCA. It went on to de-
6 scribe in Item No. 7 paragraph No. 4:

7 For years Defendant has deducted unified (sic)
8 Association dues from salaries of Association
9 members, pursuant to authorization cards executed
10 by members of the bargaining unit. Those authori-
11 zation cards continue to be valid and valid
12 authorization cards have been submitted to Defen-
13 dant by all new teachers, but Defendant has failed
14 to deduct dues from October salaries of teachers
15 in the bargaining unit.

16 The above language appears to satisfy the requirements
17 of 24,26,680 ARM. If the School District had questions
18 about the details of what the employer was being charged
19 with, it could have filed a motion for a more definite
20 statement. Failure to do so does not proscribе considera-
21 tion of all the facts on the record and a determination of
22 whether such facts constitute an unfair labor practice under
23 Section 39-31-401(1) MCA as an independent violation aside
24 from the alleged Section 39-31-401(5) MCA violation.

25 In Billings School District #2 (Board of Trustees) v.
26 Montana Board of Personnel Appeals, 185 Mont. 184, 183 LRM
27 2285 (1979) the Montana Supreme Court held that fair notice
28 of coercion was received by the District when the complaint
29 stated that the District had violated Section 59-1605(1) (a)
30 and (e), R.C.M. 1947 (now codified as 39-31-401(1) and (5)
31 MCA). When the charged party having read the pleadings
32 should have been aware of the issues which it had to defend,
33 the Court held fair notice is given. The Court further held
34 that if the District had doubts about whether coercion was
35 at issue, upon request it could have obtained a more defi-
36 nite statement of the charges.

1 The question of whether the School District's refusal
2 to deduct dues upon authorization using the Association form
3 interfered, coerced or restrained the teachers' right to
4 assist a labor organization and to exercise other rights
5 protected by Section 39-31-201 MCA requires examination.

6 In the view of the National Labor Relations Board
7 motive is not an element in a Section 8(a)(1) violation. In
8 American Freightways Co., 124 NLRB 146, 44 LRRM 1302 (1959)
9 the Board set forth the test for determining such violations:

10 It is well settled that the test of interference,
11 restraint and coercion under Section 8(a)(1) of
12 the Act does not turn on the employer's motive or
13 on whether the coercion succeeded or failed. The
14 test is whether the employer engaged in conduct
15 which, it may reasonably be said, tends to inter-
16 fere with the free exercise of employee rights
17 under the Act. (Citing NLRB v. Illinois Tool
18 Works, 153 F.2d 811, 17 LRRM 841 (CA7 1946) and
19 Cosco Products Co., 123 NLRB No. 91, 43 LRRM 1534
20 (1959)).

21 The Board of Personnel Appeals has recently addressed
22 the question of motive and its relation to Section 39-31-
23 401(1) MCA violations in Missoula County High School Educa-
24 tion Association, MEA v. Missoula County High School Dis-
25 trict, OLP 34-82 where it stated:

26 To the extent that it is possible to summarize the
27 standards which may be extracted from the section
28 8(a)(1) and 8(a)(3) cases which have been cited in
29 counsels' briefs and noted above, one could say
30 that where the effect of the employer's action
31 upon section 7 rights is significant, motive is
32 irrelevant. In that type of case the establishing
of a legitimate business justification is of no
avail. Where the effect is minor, however, the
action will be deemed to be justified when signif-
icant and legitimate interests of the employer are
shown.

33 Applying the facts of the instant case to the princi-
34 ples set forth in Missoula County, supra, it seems clear
35 that the School District engaged in conduct which interferes
36 and restrains the right of teachers to assist a labor
37 organization. The District, perhaps through its misunder-
38 standing of the difference between agency shop with contrac-

1 tual dues deduction and no union security at all but still
2 statutory dues deduction, insisted on placing the Association
3 in an inferior position by showing to all its bargaining
4 unit members that the Association could have its dues
5 collected by the District only if the Association capitulated
6 to the use of a different authorization form. The
7 District made it known, for all members to see, that it
8 could frustrate the Association's business affairs by
9 forcing the Association to either acquiesce in the use of
10 the District's form or have its members forego their right
11 to dues deduction under Section 39-31-203 MCA.

12 The District had no legitimate business justification
13 for refusing to honor the authorization form it had previously
14 honored. The District's perceived problem was solved
15 when it bargained out of the contract the agency shop
16 clause. Once that happened teachers who did not want to pay
17 union dues could not be forced to pay them. There was no
18 practical reason for the District to insist, even prior to
19 the settlement of the new contract, that the form be changed
20 because agency shop was causing the "problem," not the form
21 used for authorizing dues deduction. The District's only
22 legitimate interest in the form itself was that it in fact
23 authorized a specific deduction. Since the Association form
24 met all the requirements mentioned earlier herein, one can
25 only surmise that the District judged amiss or that it
26 wanted to frustrate the Association. In either case, its
27 action interfered with important employee statutory rights.

28 The effect of the School District's action in refusing
29 to recognize the Association's authorization form had a
30 serious impact on the rights of member teachers to assist
31 the Association in maintaining an orderly and effective
32 means of financing itself. It is elementary that the value

1 to a union of dues checkoff is substantial, it relieves the
2 union of the time and effort which otherwise would have to
3 be spent making monthly collections. That automatic deduc-
4 tion is critical to employees and labor organizations can be
5 presumed from the fact that the legislature made it compul-
6 sory once authorized by the employee. Moreover, a union,
7 like any organization supported by contributions from its
8 members, has a vital need to maintain a position of effec-
9 tiveness in its members eyes. Whenever that position is
10 adversely effected by outside influences and the union is
11 without recourse to remedy the effect, its image and effec-
12 tiveness suffer.

13 The issue raised by this unfair labor practice charge
14 is important to public employees and labor organizations
15 statewide. If a public employer is permitted to frustrate
16 the right of public employees to assist labor organizations
17 through statutory dues checkoff by bargaining to impasse,
18 and thereby deny it in effect, the whole process will be
19 harmed. The legislature did not intend that checkoff be the
20 subject of give and take at the bargaining table, otherwise
21 it would not have included Section 39-31-203 MCA in the Act.
22 Once an employee submits authorization the employer has no
23 discretion. The form itself is a matter for the employee
24 and his union to decide upon just as would be the form used
25 by the union to provide certification to the employer. If
26 any employee objects to the use of a particular form, his
27 recourse lies with his union. It was not intended that the
28 public employer step in and attempt to interfere with
29 internal union affairs.

30 In summary, I find that the School District's act of
31 refusing to accept the Association's authorization form had
32 a significant effect on teachers' right to assist the Asso-

1 ciation. Moreover, I find that the District had no legiti-
2 mate or significant interest in insisting that its own form
3 be used. The harm done to teachers' interest in assisting
4 the Association far outweighs even the perceived interest of
5 the District. The District's act has created a visible and
6 continuing obstacle to the free exercise of teacher rights
7 under the Collective Bargaining for Public Employees Act.
8

9 CONCLUSION OF LAW

10 By its action of refusing to deduct dues from teachers'
11 salaries the School District violated Section 39-31-401(1)
12 MCA.
13

14 RECOMMENDED ORDER

15 Based on the findings of fact and conclusion of law
16 made herein, IT IS ORDERED that Richland County High School
17 District #1 and Elementary District #5, its Trustees,
18 officers, agents and representatives shall:

19 1. Cease and desist from refusing to deduct dues from
20 the salaries of bargaining unit members who submit or who
21 have already submitted signed Association authorization
22 forms.

23 2. Confer with counsel for the Association on amounts
24 due the Association in accordance with this decision.

25 3. If conference with Association's counsel does not
26 settle the matter of amounts due, inform this Board so that
27 a remedial hearing, pursuant to the parties' stipulation
28 noted in finding of fact No. 22, may be set.

29 4. Post in a conspicuous place where teachers regu-
30 larly congregate in each of Defendants school buildings the
31 attached notice marked "Appendix."
32

1 5. Notify this Board within twenty days from receipt
2 of its final order what steps have been taken to comply
3 therewith.
4

5 NOTICE

6 Exceptions to these findings, conclusions and recommen-
7 dation may be filed within twenty days of service. If
8 exceptions are not filed the recommended order will become
9 the final order of the Board.

10 Dated this 30th day of August, 1985.

11 BOARD OF PERSONNEL APPEALS

12
13 BY: 
14 JACK H. CALHOUN
15 Hearing Examiner

16 CERTIFICATE OF MAILING

17 The undersigned does certify that a true and correct
18 copy of this document was mailed to the following on the
19 30th day of August, 1985:

20 Leslie S. Waite, III
21 400 First National Bank Bldg.
22 P.O. Box 2871
23 Great Falls, MT 59403

24 Emilie Loring, P.C.
25 121 Fourth Street N. Suite 2G
26 Great Falls, MT 59401

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